

AMENDED IN SENATE JUNE 29, 2006

AMENDED IN SENATE JUNE 15, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2728

Introduced by Assembly Member Klehs

February 24, 2006

An act to amend Sections 12001 and 12276.5 of, and to add Section 12282 to, the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL’S DIGEST

AB 2728, as amended, Klehs. Firearms.

Existing law establishes a list of certain firearms by make and model as assault weapons and otherwise describes or defines certain firearms as firearms.

This bill would provide that the term “assault weapon” for those purposes includes the frame or receiver of the weapon.

Existing law provides a judicial procedure for declaring a firearm an assault weapon, as specified.

This bill would repeal those provisions.

Existing law authorizes the Attorney General to declare a firearm an assault weapon.

This bill would provide that authorization ends January 1, 2007.

Existing law generally regulates the possession of assault weapons and .50 BMG rifles.

This bill would provide that possession of any assault weapon or of any .50 BMG rifle in violation of specified provisions of law would be a public nuisance. The bill would authorize the Attorney General, any

district attorney, or any city attorney to bring an action in superior court, *in lieu of criminal prosecution*, to enjoin the possession of the assault weapon or .50 BMG rifle. The bill would further provide that any assault weapon or .50 BMG rifle possessed in violation of specified provisions of law would, subject to exception, be destroyed, as specified. The bill would also provide that upon conviction of any misdemeanor or felony involving an assault weapon, the assault weapon would be deemed a nuisance and disposed of as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12001 of the Penal Code is amended to
2 read:
3 12001. (a) (1) As used in this title, the terms “pistol,”
4 “revolver,” and “firearm capable of being concealed upon the
5 person” shall apply to and include any device designed to be used
6 as a weapon, from which is expelled a projectile by the force of
7 any explosion, or other form of combustion, and that has a barrel
8 less than 16 inches in length. These terms also include any device
9 that has a barrel 16 inches or more in length which is designed to
10 be interchanged with a barrel less than 16 inches in length.
11 (2) As used in this title, the term “handgun” means any
12 “pistol,” “revolver,” or “firearm capable of being concealed upon
13 the person.”
14 (b) As used in this title, “firearm” means any device, designed
15 to be used as a weapon, from which is expelled through a barrel a
16 projectile by the force of any explosion or other form of
17 combustion.
18 (c) As used in Sections 12021, 12021.1, 12070, 12071, 12072,
19 12073, 12078, 12101, and 12801 of this code, and Sections 8100,
20 8101, and 8103 of the Welfare and Institutions Code, the term
21 “firearm” includes the frame or receiver of the weapon.
22 (d) For the purposes of Sections 12025 and 12031, the term
23 “firearm” also shall include any rocket, rocket propelled
24 projectile launcher, or similar device containing any explosive or
25 incendiary material whether or not the device is designed for
26 emergency or distress signaling purposes.

1 (e) For purposes of Sections 12070, 12071, and paragraph (8)
2 of subdivision (a), and subdivisions (b), (c), (d), and (f) of
3 Section 12072, the term “firearm” does not include an unloaded
4 firearm that is defined as an “antique firearm” in Section
5 921(a)(16) of Title 18 of the United States Code.

6 (f) Nothing shall prevent a device defined as a “handgun,”
7 “pistol,” “revolver,” or “firearm capable of being concealed upon
8 the person” from also being found to be a short-barreled shotgun
9 or a short-barreled rifle, as defined in Section 12020.

10 (g) For purposes of Sections 12551 and 12552, the term “BB
11 device” means any instrument that expels a projectile, such as a
12 BB or a pellet, not exceeding 6mm caliber, through the force of
13 air pressure, gas pressure, or spring action, or any spot marker
14 gun.

15 (h) As used in this title, “wholesaler” means any person who is
16 licensed as a dealer pursuant to Chapter 44 (commencing with
17 Section 921) of Title 18 of the United States Code and the
18 regulations issued pursuant thereto who sells, transfers, or
19 assigns firearms, or parts of firearms, to persons who are licensed
20 as manufacturers, importers, or gunsmiths pursuant to Chapter 44
21 (commencing with Section 921) of Title 18 of the United States
22 Code, or persons licensed pursuant to Section 12071, and
23 includes persons who receive finished parts of firearms and
24 assemble them into completed or partially completed firearms in
25 furtherance of that purpose.

26 “Wholesaler” shall not include a manufacturer, importer, or
27 gunsmith who is licensed to engage in those activities pursuant to
28 Chapter 44 (commencing with Section 921) of Title 18 of the
29 United States Code or a person licensed pursuant to Section
30 12071 and the regulations issued pursuant thereto. A wholesaler
31 also does not include those persons dealing exclusively in grips,
32 stocks, and other parts of firearms that are not frames or receivers
33 thereof.

34 (i) As used in Section 12071 or 12072, “application to
35 purchase” means any of the following:

36 (1) The initial completion of the register by the purchaser,
37 transferee, or person being loaned the firearm as required by
38 subdivision (b) of Section 12076.

39 (2) The initial completion and transmission to the department
40 of the record of electronic or telephonic transfer by the dealer on

1 the purchaser, transferee, or person being loaned the firearm as
2 required by subdivision (c) of Section 12076.

3 (j) For purposes of Section 12023, a firearm shall be deemed
4 to be “loaded” whenever both the firearm and the unexpended
5 ammunition capable of being discharged from the firearm are in
6 the immediate possession of the same person.

7 (k) For purposes of Sections 12021, 12021.1, 12025, 12070,
8 12072, 12073, 12078, 12101, and 12801 of this code, and
9 Sections 8100, 8101, and 8103 of the Welfare and Institutions
10 Code, notwithstanding the fact that the term “any firearm” may
11 be used in those sections, each firearm or the frame or receiver of
12 the same shall constitute a distinct and separate offense under
13 those sections.

14 (l) For purposes of Section 12020, a violation of that section as
15 to each firearm, weapon, or device enumerated therein shall
16 constitute a distinct and separate offense.

17 (m) Each application that requires any firearms eligibility
18 determination involving the issuance of any license, permit, or
19 certificate pursuant to this title shall include two copies of the
20 applicant’s fingerprints on forms prescribed by the Department
21 of Justice. One copy of the fingerprints may be submitted to the
22 United States Federal Bureau of Investigation.

23 (n) As used in this chapter, a “personal handgun importer”
24 means an individual who meets all of the following criteria:

25 (1) He or she is not a person licensed pursuant to Section
26 12071.

27 (2) He or she is not a licensed manufacturer of firearms
28 pursuant to Chapter 44 (commencing with Section 921) of Title
29 18 of the United States Code.

30 (3) He or she is not a licensed importer of firearms pursuant to
31 Chapter 44 (commencing with Section 921) of Title 18 of the
32 United States Code and the regulations issued pursuant thereto.

33 (4) He or she is the owner of a handgun.

34 (5) He or she acquired that handgun outside of California.

35 (6) He or she moves into this state on or after January 1, 1998,
36 as a resident of this state.

37 (7) He or she intends to possess that handgun within this state
38 on or after January 1, 1998.

39 (8) The handgun was not delivered to him or her by a person
40 licensed pursuant to Section 12071 who delivered that firearm

1 following the procedures set forth in Section 12071 and
2 subdivision (c) of Section 12072.

3 (9) He or she, while a resident of this state, had not previously
4 reported his or her ownership of that handgun to the Department
5 of Justice in a manner prescribed by the department that included
6 information concerning him or her and a description of the
7 firearm.

8 (10) The handgun is not a firearm that is prohibited by
9 subdivision (a) of Section 12020.

10 (11) The handgun is not an assault weapon, as defined in
11 Section 12276 or 12276.1.

12 (12) The handgun is not a machinegun, as defined in Section
13 12200.

14 (13) The person is 18 years of age or older.

15 (o) For purposes of paragraph (6) of subdivision (n):

16 (1) Except as provided in paragraph (2), residency shall be
17 determined in the same manner as is the case for establishing
18 residency pursuant to Section 12505 of the Vehicle Code.

19 (2) In the case of members of the Armed Forces of the United
20 States, residency shall be deemed to be established when he or
21 she was discharged from active service in this state.

22 (p) As used in this code, “basic firearms safety certificate”
23 means a certificate issued by the Department of Justice pursuant
24 to Article 8 (commencing with Section 12800) of Chapter 6 of
25 Title 2 of Part 4, prior to January 1, 2003.

26 (q) As used in this code, “handgun safety certificate” means a
27 certificate issued by the Department of Justice pursuant to Article
28 8 (commencing with Section 12800) of Chapter 6 of Title 2 of
29 Part 4, as that article is operative on or after January 1, 2003.

30 (r) As used in this title, “gunsmith” means any person who is
31 licensed as a dealer pursuant to Chapter 44 (commencing with
32 Section 921) of Title 18 of the United States Code and the
33 regulations issued pursuant thereto, who is engaged primarily in
34 the business of repairing firearms, or making or fitting special
35 barrels, stocks, or trigger mechanisms to firearms, or the agent or
36 employee of that person.

37 (s) For purposes of Section 12276 the term “assault weapon”
38 includes the frame or receiver of the weapon.

39 SEC. 2. Section 12276.5 of the Penal Code is amended to
40 read:

12276.5. (a) (1) The Attorney General shall prepare a description for identification purposes, including a picture or diagram, of each assault weapon listed in Section 12276, and any firearm declared to be an assault weapon pursuant to this section, and shall distribute the description to all law enforcement agencies responsible for enforcement of this chapter. Those law enforcement agencies shall make the description available to all agency personnel.

(2) For purposes of this section, the term “assault weapon” includes the frame or receiver of the weapon.

(b) (1) Until January 1, 2007, the Attorney General shall promulgate a list that specifies all firearms designated as assault weapons in Section 12276 or declared to be assault weapons pursuant to this section. The Attorney General shall file that list with the Secretary of State for publication in the California Code of Regulations. Any declaration that a specified firearm is an assault weapon shall be implemented by the Attorney General who, within 90 days, shall promulgate an amended list which shall include the specified firearm declared to be an assault weapon. The Attorney General shall file the amended list with the Secretary of State for publication in the California Code of Regulations. Any firearm declared to be an assault weapon prior to January 1, 2007, shall remain on the list filed with the Secretary of State.

(2) Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, pertaining to the adoption of rules and regulations, shall not apply to any list of assault weapons promulgated pursuant to this section.

(c) The Attorney General shall adopt those rules and regulations that may be necessary or proper to carry out the purposes and intent of this chapter.

SEC. 3. Section 12282 is added to the Penal Code, to read:

12282. (a) Possession of any assault weapon, as defined in Section 12276, 12276.1 or 12276.5, or of any .50 BMG rifle, in violation of this chapter is a public nuisance. The Attorney General, any district attorney, or any city attorney may, *in lieu of criminal prosecution*, bring an action in superior court to enjoin the possession of the assault weapon or .50 BMG rifle. Any assault weapon or .50 BMG rifle possessed in violation of, or otherwise in violation of this chapter shall be destroyed in a

1 manner so that it may no longer be used, except upon the filing
2 of a certificate of a judge of a court of record, or the district
3 attorney, or the Department of Justice stating that the
4 preservation of the assault weapon or .50 BMG rifle is necessary
5 to serve the ends of justice.

6 (b) Upon conviction of any misdemeanor or felony involving
7 an assault weapon, the assault weapon shall be deemed a
8 nuisance and disposed of pursuant to subdivision (d) of Section
9 12028.

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